Supreme Court, U.S.
FILED
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No. 01-254

IN THE

Supreme Court of the United States

EDWARD PRIMO and DELORES PRIMO, h/w,

Petitioners,

v.

COLANERO CONTRACTING COMPANY, COLANERO EQUIPMENT COMPANY and CSX TRANSPORTATION, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION FOR RESPONDENT CSX TRANSPORTATION, INC.

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STATEMENT PURSUANT TO RULE 29.6

Respondent, CSX Transportation, Inc., is a wholly owned subsiduary of CSX Corporation which is publicly traded.

It is difficult to discern Petitioner's proffered reasons for granting the Writ, but they apparently relate to the supposed failure of the Pennsylvania Superior Court to issue a formal opinion disposing of Petitioner's appeal from the granting by the trial court of judgment notwithstanding the verdict to Respondents Colanero Contracting Company and Colanero Equipment Company (collectively referred to as "Colanero"), and the granting of a directed verdict to Respondent CSX Transportation, Inc. ("CSXT"). In reality, the Pennsylvania Superior Court issued a three-page Memorandum Opinion in which it adopted by reference the eighteen page Opinion of the Trial Court disposing of Petitioner's Post-Trial Motions pertaining to Colanero and CSXT.

Thus, there is no factual support for Petitioner's argument to grant the Writ. Moreover, there is no legal support for Petitioner's argument that every appellant has a constitutional right to have his appeal be the subject of a written opinion by an appellate court. For these reasons, this Court should deny the Petition for a Writ of Certiorari.

Courts of Appeal Should Have Wide Latitude in Their Decisions on Whether or How to Write Opinions

In *Taylor v. McKeithen*, 407 U.S. 191, 194 n.4 (1972) (*per curium*), this Court stated that ". . . Courts of Appeal should have wide latitude in their decisions of whether or how to write opinions." Contrary to Petitioner's argument herein, no Court has ever held that an appellant has a constitutional right to a written opinion disposing of his appeal. *See E.T. Furman v. United States of America*, 720 F.2d 263, 264 (2d Cir. 1983) (*per curium*) ("There is no requirement in law that a federal appellate court's decision

be accompanied by a written opinion."). Moreover, the Tenth Circuit has held that there is nothing inherently objectionable in a state court's (in that case Oklahoma's) use of summary opinions in unpublished cases. *King v. Champion*, 55 F.3d 522, 526 (10th Cir. 1995).

Consistent with the above, the Fifth Circuit has stated in *NLRB v. Amalgamated Clothing Workers of America*, 430 F.2d 966, 971 n.2 (5th Cir. 1970), as follows:

> . . . our experience, bearing out that of appellate courts generally, is convincing that in a number of cases there is no real need for an opinion at all. Where in a given case that is the considered judicial judgment of three Judges comprising a panel, then it is perfectly obvious that the now limited and precious judicial resources can be husbanded by a procedure which eliminates that unnecessary opinion.

While the Failure to Issue an Opinion Does Not Equate with the Failure by an Appellate Court to Consider the Appellate Issue, the Appellate Court in This Case Did, in Fact, Issue an Opinion

The Opinion of the Pennsylvania Superior Court on Petitioner's Appeal is at A 15 of the Appendix. The Opinion is three pages long and concludes with the following paragraph:

> After reviewing the parties' briefs, the record, and the relevant law, we conclude that the opinion authored by the Honorable Judge Carolyn E. Temin, adequately addresses and disposes of the

> issues raised on appeal. We, therefore, rely upon Judge Temin's Opinion, a copy of which is attached for your review.

While there would be no constitutional issue raised if the Pennsylvania Superior Court had issued no written opinion whatsoever disposing of Petitioner's appeal, the fact that it did, the fact that it adopted the trial court's written opinion, and the fact that it specifically noted that it considered the parties' briefs, the record, and the relevant law in rendering its decision, conclusively puts to rest Petitioner's nebulous argument of due process violations.

CONCLUSION

The Petition in this case provides neither factual nor legal support for the granting of a writ, and the Petition should be denied.

Respectfully submitted,

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